

## South Africa

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In May 2014, South Africa held national elections that were considered free and fair by domestic and international observers. However, there were growing concerns about a decline in prosecutorial independence, labor unrest, and political pressure on an otherwise robust media landscape. South Africa continued to be marked by high-profile corruption scandals, particularly surrounding allegations that had surfaced in 2013 that President Jacob Zuma had personally benefitted from state-funded renovations to his private homestead in Nkandla, KwaZulu-Natal.

The ruling African National Congress (ANC) won in the 2014 elections with a slightly smaller vote share than in 2009. The newly formed Economic Freedom Fighters (EFF), a populist splinter from the ANC Youth League, emerged as the third-largest party. The subsequent session of the National Assembly was more adversarial than previous iterations, including at least two instances when ANC leaders halted proceedings following EFF-led disruptions.

Beginning in January, the Association of Mineworkers and Construction Union (AMCU) led a five-month strike in the platinum sector, South Africa's longest and most costly strike. The strike saw some violence and destruction of property, though less than AMCU strikes in 2012 and 2013. The year also saw continued infighting between rival trade unions. The labor unrest exacerbated the flagging of the nation's economy and the high unemployment rate, which stood at approximately 25 percent nationally and around 36 percent for youth.

Political Rights and Civil Liberties:

### **Political Rights: 33 / 40 [Key]**

#### **A. Electoral Process: 12 / 12**

Elections for the 400-seat National Assembly (NA), the lower house of the bicameral Parliament, are determined by party-list proportional representation. Winning 62.2 percent of the vote in the 2014 elections, the ANC controlled 249 of 400 seats in the NA. The liberal Democratic Alliance (DA) took 22.2 percent of the vote and 89 seats and the EFF won 6.4 percent of the vote and 25 seats. The Zulu-nationalist Inkatha Freedom Party (IFP) took 10 seats, and nine smaller parties shared the remaining seats. The 90 members of the upper chamber, the National Council of Provinces, are selected by the provincial legislatures; the ANC won majorities in 8 out of 9 of those bodies in the 2014 elections. The NA elects the president to serve concurrently with its five-year term, and presidents can serve a maximum of two terms. Zuma easily won election to a second term as president in May.

Domestic and international observers declared the May 2014 elections free and fair despite isolated instances of political violence, allegations of biased state-run media, and discrimination in allocating election rally permits. Party and voter registration proceeded transparently and without major incident.

The lead-up to the election saw some disputes related to opposition campaign activities, including over a text message the DA sent to some 1.5 million voters in March accusing Zuma of stealing public money in the Nkandla affair. In May, the Electoral Court upheld an ANC petition declaring that the message constituted false information. The DA said that it would appeal the ruling to the Constitutional Court. A ban by the state-run South African Broadcasting Corporation (SABC) on EFF election ads calling for the physical removal of road tolling stations was upheld by the Independent Communication Association of South Africa. In April, the SABC refused to air a DA ad campaign criticizing the ANC on the basis that the ad could incite violence against the police and constituted a personal attack on Zuma, violating the Advertising Standards Authority's code of conduct. The Independent Communications Authority of South Africa agreed with the DA that the SABC must overturn the ban, but subsequently required the DA to remove a section of the ad at the request of the South African Police Service (SAPS).

The Independent Electoral Commission (IEC) is largely independent. IEC credibility was weakened slightly by 2013 corruption allegations against chairperson Pansy Tlakula, which were unrelated to the IEC's management of the 2014 elections. Following a June 2014 Electoral Court ruling that Tlakula should be removed from her office, she stepped down in September.

## **B. Political Pluralism and Participation: 13 / 16**

Of 152 registered political parties, 29 competed at the national level in 2014, and 16 only at the provincial level. The ANC, which is part of a tripartite governing alliance with COSATU and the South African Communist Party, has won every election since 1994 and dominates the political landscape. Factionalism within the ANC and within COSATU, as well as tensions between the alliance partners, has been a hallmark of South African politics in recent years, while patronage, purges, and political violence have become increasingly common.

The DA is the leading opposition party, followed by the EFF and the IFP. The emergence of new and more assertive opposition parties invoked occasional government restrictions on political events and rallies in 2014, as well as some notable clashes between rival party supporters. In February, lightly armed ANC supporters blocked DA supporters marching to ANC headquarters to protest unemployment. In April, a marquee at an EFF rally site was firebombed before the event. An April report by the Community Agency for Social Enquiry found that the spread of misinformation, disruption of rival political party events, threats, and economic retaliation were the most common forms of political intimidation employed before the election; the report also identified 12 potentially politically motivated deaths between January 2013 and February 2014.

Postelection NA sessions have set a more adversarial tone than those of the past, despite the fact that the ANC still commands a large majority. In August, EFF members of Parliament demanding that Zuma "pay back the money" disrupted Zuma's response to

questions about the Nkandla affair, leading to the eventual suspension of the parliamentary session. In November, opposition members disrupted proceedings again, and riot police were called to intervene; four members of Parliament were reportedly injured in scuffles. The same month, five EFF members, including party leader Julius Malema, were suspended from Parliament for 30 days without pay over the August disruption, although a court overturned the suspensions in late December.

### **C. Functioning of Government: 8 / 12**

Several agencies are tasked with combating corruption, but enforcement is inadequate. Public servants regularly fail to declare their business interests as required by law, and the ANC has been criticized for charging fees to business leaders for access to top government officials. The tender process for public contracts is often politically driven and opaque. According to the auditor general's report for the 2013–14 fiscal year, government departments made 62.7 billion rand (\$5.4 billion) in “irregular” expenditures (for example, spending that did not follow supply-chain procedures), and expenditures worth 2.6 billion rand (\$220 million) were not authorized at all. South Africa was ranked 67 out of 175 countries and territories surveyed in Transparency International's 2014 Corruption Perceptions Index.

Zuma continued to face scrutiny in 2014. In August, the Supreme Court of Appeals upheld a lower-court ruling ordering the National Prosecuting Authority (NPA) to comply with a DA request to make public secret recordings of the NPA's justifications for dropping fraud and corruption charges against Zuma in 2009. In March, Public Protector Thuli Madonsela released a long-awaited report on Nkandla, concluding that Zuma had derived undue personal benefit from the 246 million rand (\$23 million) in upgrades to his homestead, ostensibly made for security reasons; the report recommended that Zuma repay a portion of the funds. Opposition parties in September withdrew from the parliamentary committee responsible for responding to the report, arguing that the ANC leadership of the committee was unconstitutionally attempting to insulate Zuma from Madonsela's findings; the ANC still held a quorum on the committee, however, and in October, the remaining members released a draft report that absolved Zuma of wrongdoing and held that Madonsela's recommendations were nonbinding.

## **Civil Liberties: 48 / 60**

### **D. Freedom of Expression and Belief: 15 / 16**

Freedoms of expression and the press are protected in the constitution and generally respected in practice. South Africa features a vibrant and often adversarial media landscape, including independent civic groups that have helped push back government efforts to encroach on freedom of expression. Nonetheless, concerns about press freedom have grown in recent years as the ANC government has appeared to exert increasing political pressure on both state-run and independent outlets.

Most South Africans receive the news via radio outlets, the majority of which are controlled by the SABC. The SABC also dominates the television market, but two commercial stations and satellite television are expanding their reach. The government is highly sensitive to media criticism and has increasingly encroached on the editorial independence of the SABC. Some government critics have been barred from SABC programs; a number of programs have been canceled due to political considerations; and there is strong pressure on journalists to refrain from critical reporting of the ANC and Zuma.

Private newspapers and magazines are often critical of powerful figures and institutions and remain a crucial check on the government. However, government allies own a growing share of independent media. A number of key staff members have left the Independent News & Media South Africa claiming political interference since the company was acquired by the ANC-connected Sekunjalo Investments. Internet access is unrestricted and growing rapidly, though many South Africans cannot afford the service fee.

The government has recently enacted or proposed several potentially restrictive laws, with significant pushback from civil society, judicial authorities, and opposition parties. In part because of such opposition, Zuma has yet to sign into law a revised version of the controversial Protection of State Information Bill, which would allow state agencies to classify a wide range of information as in the “national interest” and thus restrict its publication. In recent years, the government has increasingly made use of the apartheid-era National Key Points Act to restrict access to and reporting on locations deemed to be of interest to national security, including Nkandla. The High Court has ordered the police minister to release the list of the some 200 key points under a freedom of information request, but as of the end of 2014, he had yet to comply.

In January 2014, freelance photojournalist Michael Tshele was allegedly shot and killed by police while covering protests in North West province. He was the first journalist killed in South Africa since 1994.

Freedom of religion and academic freedom are constitutionally guaranteed and actively protected by the government. South Africans may freely engage in private discussions of a political nature without fear of harassment.

## **E. Associational and Organizational Rights: 12 / 12**

The constitution guarantees freedoms of association and peaceful assembly. Freedom of assembly is generally respected, and South Africa has a vibrant protest culture; demonstrators must notify police ahead of time but are rarely prohibited from gathering. In recent years, however, a growing number of community protests over public-service delivery have turned violent and been forcibly dispersed by police.

South Africa hosts a vibrant civil society. Nongovernmental organizations (NGOs) can register and operate freely, and lawmakers regularly accept input from NGOs on pending legislation.

South Africans are generally free to form, join, and participate in independent trade unions, and the country's labor laws offer unionized workers a litany of protections; contract workers and those in the informal sector enjoy fewer safeguards. Strike activity is very common, and unionized workers often secure above-inflation wage increases. In addition to the AMCU platinum-sector strike, the National Union of Metalworkers of South Africa led a month-long strike in metals and engineering in July. COSATU still dominates the labor landscape but is increasingly challenged by independent unions and intrafederation factionalism. Growing union rivalries, especially in mining, have led to an increase in violent tactics to win and retain members and attack opponents, while violent and illegal strikes have also increased in recent years.

The Farlam Commission, a government-sponsored inquiry into the 2012 police killings of 34 striking mineworkers at Marikana, concluded hearings in November 2014 and was expected to present its final report in March 2015. In an August 2014 press release, Amnesty International alleged that police had used unlawful and unjustified lethal force at Marikana, had falsified evidence, and had attempted to mislead the Farlam Commission.

#### **F. Rule of Law: 10 / 16**

The constitution guarantees judicial independence, and the courts—particularly the Constitutional Court and the Supreme Court of Appeal—operate with substantial autonomy. The Constitutional Court is the country's apex court, followed by the Supreme Court of Appeal, a general appellate court. The Judicial Services Commission appoints Constitutional Court judges based on both merit and government efforts to racially transform the judiciary. The controversial 2013 Legal Practice Bill, signed into law by Zuma in September 2014, allows the state to regulate the previously self-regulating legal profession with a 22-member council (3 members of which are appointed by the justice minister) in order to facilitate racial transformation.

Judicial and prosecutorial independence have come under pressure in recent years amid the Zuma corruption cases, prompting several instances of prosecutorial misconduct. Although judicial authorities continued to push back on infringements, the most senior ANC leaders generally maintained impunity for a range of alleged offenses. The NPA has seen a string of overtly political hirings and firings, and the office appeared to be experiencing increasing infighting between Zuma allies and critics. In July 2014, Zuma announced an inquiry into NPA head Mxolisi Sandile Oliver Nxasana—who had been appointed less than a year earlier but was apparently already at loggerheads with Zuma allies in the authority—after it was reported that he had been denied a security clearance because he had not disclosed that he had faced a charge of murder when he was 18 years old. (He had been acquitted of the murder charge on self-defense grounds.) In December 2014, Anwa Dramat, the head of the Hawks—a police body charged with investigating corruption, organized crime, and other serious crimes—was suspended over alleged involvement in the illegal rendition of Zimbabwean migrants; critics claimed that the suspension was in retaliation for his investigation of senior ANC officials, including Zuma.

Judicial staff and resource shortages undermine defendants' procedural rights, including the rights to a timely trial and state-funded legal counsel. According to a Judicial Inspectorate for Correctional Services (JICS) report released in October 2014, there were more than 44,000 pretrial detainees in 2014, out of a total prison population of more than 154,000; more than 18,000 pretrial detainees, or 41 percent, were juveniles and children. Pretrial detainees wait an average of three months before trial, and some beyond the legal maximum of two years. Lower courts have proved more susceptible to corruption than the higher panels, and there have been reports of physical intimidation of judges and magistrates.

Customary law plays a significant role in areas that under apartheid had been designated as land reserves for the black population. Traditional councils in these areas have authority over some aspects of local administration and can enforce customary law, provided it does not contravene the constitution. While this policy reduces the burden on state courts, customary law is replete with discriminatory provisions affecting women and certain minorities.

Despite constitutional prohibitions and some government countermeasures, there are many reports of police torture and excessive force during arrest, interrogation, and detention. Prisons are often plagued by overcrowding, inadequate health care, and abuse of inmates by staff or other prisoners. The JICS investigates prisoners' complaints but has limited resources and capacity. According to the October 2014 JICS report, there were 4,203 inmate complaints of assault by prison officials from April 2013 to March 2014, an increase of 25 percent over the previous year, and complaints of assault by other inmates increased 48 percent.

South Africa has one of the highest rates of violent crime in the world. After declining in recent years, murder, attempted murder, and armed robbery increased in the 12 months ending March 2013 and again in the 12 months ending March 2014; overall rates of assault declined in the latter period. The Zuma administration has given the police more latitude to use force against criminals. Mostly due to police incapacity, vigilantism is a problem.

The constitution prohibits discrimination based on a range of categories, including race, sexual orientation, and culture. State bodies such as the South African Human Rights Commission and the Office of the Public Protector are empowered to investigate and prosecute discrimination cases. Affirmative action legislation has benefited previously disadvantaged groups (defined as "Africans," "Coloureds," "Asians," and "Chinese") in public and private employment as well as in education. Racial imbalances in the workforce persist, and a majority of the country's business assets remain white owned. The government's Black Economic Empowerment program aims to increase the black stake in the economy, mostly by establishing race-based ownership thresholds for government tenders and licenses.

The number of foreign nationals in South Africa is uncertain, with estimates ranging from two to seven million, including between one and three million Zimbabweans. South Africa now receives the third-highest number of asylum applications in the world—overwhelmingly from other African countries. It accepts only about 150 percent of applicants, and in November

2014 it released a draft asylum form to try to deter economic migrants, which make up the vast majority of applicants. Conditions at migrant detention centers are poor, and deportees are subject to physical and sexual abuse by police and immigration officers. Increased immigration, particularly from Zimbabwe, Mozambique, and Somalia, has spurred xenophobic violence by police and vigilantes. Sporadic attacks continued in 2014, often tied to wider service-delivery protests in which immigrants were scapegoated.

The indigenous, nomadic Khoikhoi and Khomani San peoples suffer from social and legal discrimination.

South Africa has one of the world's most liberal legal environments for LGBT (lesbian, gay, bisexual, and transgender) people. Discrimination on the basis of sexual orientation is prohibited in the constitution; a 2002 Constitutional Court ruling held that same-sex couples should have the same adoption rights as heterosexual married couples; and the 2006 Civil Unions Act legalized same-sex marriage. Nevertheless, societal bias remains strong. LGBT people are routinely subject to physical attacks, including an increase in instances of so-called corrective rape, in which lesbians are raped by men who claim this can change the victim's sexual orientation.

## **G. Personal Autonomy and Individual Rights: 11 / 16**

While there are no official restrictions on housing, employment, or freedom of movement for most South Africans, freedom of movement and some other personal freedoms are inhibited by country's high crime rate. In addition, the economic and spatial legacy of apartheid continues to segregate the population and restrict nonwhite opportunity.

The state generally protects citizens from arbitrary deprivation of property. However, the vast majority of farmland remains in the hands of white South Africans, who make up 9 percent of the population. As a result, thousands of black and mixed-race farmworkers suffer from insecure tenure rights. Illegal squatting on white-owned farms is a serious problem, as are attacks on white owners. The government vowed to transfer 30 percent of land to black owners by 2014; however, only about 7 percent of land has been transferred since 1994. A 2013 government land audit revealed the state owns between 14 and 21 percent of the country's land. The ANC government proposed a number of bills in 2014 to implement a more aggressive "just and equitable" approach to land reform, echoing language in the constitution, though most of these are still in preliminary stages. In June, Zuma signed an amendment to the 1994 Restitution of Land Rights Act that reopened the land-claims process for another five years.

The constitution guarantees and the Commission on Gender Equality promotes equal rights for women. While the constitution allows the option and practice of customary law, it does not allow such law to supersede women's rights as citizens. Nevertheless, women suffer de facto discrimination with regard to marriage (including forced marriage), divorce, inheritance, and property rights, particularly in rural areas. A Traditional Courts Bill, which sparked

concerns among civic groups about women's rights, was withdrawn in February 2014 amid opposition.

Despite a robust legal framework criminalizing domestic violence and domestic rape, both are grave problems. Only a small percentage of rapes is reported. Women are also subject to sexual harassment and wage discrimination in the workplace and are not well represented in top management positions. Women are better represented in government, holding 41.5 percent of the seats in the NA. Two of the nine provinces are led by female premiers.

### **Scoring Key: X / Y (Z)**

**X = Score Received**

**Y = Best Possible Score**

**Z = Change from Previous Year**

**Full Methodology**